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OPEN MEETING COVER SHEET

MEMORANDUM AND PROPOSAL FOR PUBLICATION

MEETING DATE:	November 30, 2021
DATE DELIVERED:	November 30, 2021
AGENDA ITEM NO.:	6
CAPTION:	Project No. 51841 – Review of 16 TAC §25.52 Relating to Electric Service Emergency Operations Plans. (Proposal for Publication)
DESCRIPTION:	Memo and Proposal for Publication

Public Utility Commission of Texas

Memorandum

TO: Chairman Peter Lake
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty

FROM: David Smeltzer, Director of Rules and Projects

DATE: November 30, 2021

RE: November 30, 2021 Open Meeting – Agenda Item No. 6
Project No. 51841, *Review of 16 TAC § 25.53 Relating to Electric Service
Emergency Operations Plans*

Please find attached to this memorandum Commission Staff's proposal for publication in the above-referenced project for consideration at the November 30, 2021 Open Meeting.

Commission Staff proposes the repeal of 16 Texas Administrative Code (TAC) §25.53, relating to Electric Service Emergency Operations Plans and proposes new 16 TAC §25.53, relating to Electric Service Emergency Operations Plans. New 16 TAC §25.53 will require a utility or other market participant to file an Emergency Operations Plan (EOP) in its entirety with the commission and outlines the required contents of an EOP. The new rule will also require an above-listed entity to particulate in drills to test its plan and provide status updates at the request of commission staff when the State Operations Center is activated. The purpose of these proposed changes is to comport with Senate Bill 3 by the 87th Regular Session of the Texas Legislature relating to state Public Utility Commission Weather Emergency Preparedness Reports, codified as Texas Utility Code §186.007.

Commission Staff recommends the Commission approve this draft for publication in the *Texas Register*.

PROJECT NO. 51841

**REVIEW OF 16 TAC §25.53
RELATING TO ELECTRIC SERVICE
EMERGENCY OPERATIONS PLANS**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

(STAFF RECOMMENDATION)

**PROPOSAL FOR PUBLICATION OF REPEAL OF 16 TAC §25.53 AND
REPLACEMENT WITH PROPOSED NEW 16 TAC §25.53, AS APPROVED AT THE
NOVEMBER 30, 2021 OPEN MEETING**

1 The Public Utility Commission of Texas (commission) proposes the repeal of 16 Texas
2 Administrative Code (TAC) §25.53 relating to Electric Service Emergency Operations Plans and
3 proposes new 16 TAC §25.53 relating to Electric Service Emergency Operations Plans. New 16
4 TAC §25.53 will require utilities and other market participants to file an emergency operations
5 plan (EOP) in its entirety with the commission and outlines the required contents of an EOP. The
6 new rule will also require an entity to participate in drills to test its plan and provide status updates
7 at the request of commission staff when the State Operations Center is activated.

8
9 New 16 TAC §25.53 implements §24 of Senate Bill 3 from the 87th Regular Session of the Texas
10 Legislature, which amended Tex. Util. Code section §186.007 relating to Public Utility
11 Commission Weather Emergency Preparedness Reports.

12
13 *Growth Impact Statement*

The agency provides the following governmental growth impact statement for the proposed rule, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rule is in effect, the following statements will apply:

(1) the proposed rule will not create a government program and will not eliminate a government program;

(2) implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rule will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rule will not require an increase and will not require a decrease in fees paid to the agency;

(5) the proposed rule will not, in effect, create a new regulation, because it is replacing a similar regulation;

(6) the proposed rule will repeal an existing regulation, but it will replace that regulation with a similar regulation;

(7) more individuals will be subject to the proposed new rule's applicability than were subject to the applicability of the rule it is being proposed to replace, because the proposed new rule will apply to municipally owned utilities; and

(8) the proposed rule will not affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

1 There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural
2 communities as a result of implementing the proposed rule. Accordingly, no economic impact
3 statement or regulatory flexibility analysis is required under Texas Government Code
4 §2006.002(c).

6 ***Takings Impact Analysis***

7 The commission has determined that the proposed rule will not be a taking of private property as
8 defined in chapter 2007 of the Texas Government Code.

10 ***Fiscal Impact on State and Local Government***

11 MacKenzie Nunez, cyber security analyst with the critical infrastructure security & risk
12 management division, has determined that for the first five-year period the proposed rule is in
13 effect, there will be no fiscal implications for the state or for units of local government under Texas
14 Government Code §2001.024(a)(4) as a result of enforcing or administering the section.

16 ***Public Benefits***

17 Ms. Nunez has determined that for each year of the first five years the proposed section is in effect
18 the public benefit anticipated as a result of enforcing the section will be the improved transparency
19 into the ability of the electric grid to withstand extreme weather events in the future. There will
20 be no adverse economic effect on small businesses or micro-businesses as a result of enforcing
21 this section.

23 ***Local Employment Impact Statement***

For each year of the first five years the proposed section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under subsection §2001.0045(c)(7).

Public Hearing

The commission staff will conduct a public hearing on this rulemaking on January 11, 2022, at 9:00 A.M. in the Commissioners' Hearing Room, 7th floor, William B. Travis Building if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by January 4, 2022. If no request for public hearing is received and the commission staff cancels the hearing, it will file in this project a notification of the cancellation of the hearing prior to the scheduled date for the hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by January 4, 2022. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 51841.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

Statutory Authority

The rule is proposed under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which provides the commission with the authority to make, adopt, and enforce rules reasonably required in the exercise of its powers and jurisdiction. The rule is also proposed under Tex. Util. Code §186.007, which requires the commission to analyze the EOPs developed by electric utilities, power generation companies, municipally owned utilities, and electric cooperatives that operate generation facilities in this state, and retail electric providers; prepare a weather emergency preparedness report; and require entities to submit updated EOPs if the EOP on file does not contain adequate information to determine whether the entity can provide adequate electric services.

Cross Reference to Statute: Public Utility Regulatory Act §14.001 and §14.002; Tex. Util. Code §186.007.

1 **§25.53. Electric Service Emergency Operations Plans.**

2

3 (a) **Application.** This section applies to each electric utility, transmission and distribution utility,
4 power generation company (PGC), municipally owned utility, electric cooperative, and retail
5 electric provider (REP), and to the Electric Reliability Council of Texas (ERCOT). The term
6 “entity” as used in this section refers to the above-listed entities.

7

8 (b) **Definitions.**

9 (1) **Annex** -- a section of an emergency operations plan (EOP) that addresses how an entity
10 plans to respond to the incidence of a specific hazard or threat.

11 (2) **Drill** -- an operations-based exercise that is a coordinated, supervised activity employed to
12 test an entity’s EOP. A drill may be used to develop or test new policies or procedures or
13 to practice and maintain current skills.

14 (3) **Emergency** -- any incident resulting from an imminent hazard or threat that endangers life
15 or property or presents credible risk to the continuity of electric service. The term includes
16 an emergency declared by local, state, or federal government; ERCOT; or a Reliability
17 Coordinator that is applicable to the entity.

18 (4) **Emergency operations plan** -- the plan and attached annexes, maintained on a continuous
19 basis by an entity, intended to protect life and property and ensure continuity of adequate
20 electric service in response to an emergency.

21 (5) **Hazard** -- a natural, technological, or human-caused condition that is potentially dangerous
22 or harmful to life, information, operations, the environment, or property.

23 (6) **Threat** -- the intention and capability of an individual or organization to harm life,
24 information, operations, the environment, or property.

25

(c) **Filing requirements.**

- (1) An entity must file an EOP under this section by April 1, 2022. Beginning in 2023, an entity must annually file an EOP no later than February 15 in the manner prescribed by the commission.
 - (A) An entity must file with the commission its unredacted EOP in its entirety and a public, redacted EOP.
 - (B) For an entity with operations within the ERCOT power region, the entity must submit its unredacted EOP in its entirety to ERCOT.
 - (C) Beginning in 2023, the annual EOP must include, for each incident in the prior calendar year that required the entity to activate its EOP, a summary after-action report that includes lessons learned and an outline of changes the entity made to the EOP as a result.
- (3) A person seeking registration as a PGC or certification as a REP must file an EOP with the commission at the time it applies for registration or certification with the commission, and must submit the EOP to ERCOT if it will operate in the ERCOT power region, no later than ten days after the commission approves the person's certification or registration.
- (4) Updated filings. An entity must file an updated EOP with the commission within 30 days under the following circumstances.
 - (A) An entity must file an updated EOP if commission staff determines that the entity's EOP on file does not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency.
 - (B) An entity must file an updated EOP in response to feedback provided from commission staff.
 - (C) An entity must file an updated EOP if the entity makes a significant change to its EOP. A significant change to an EOP includes a change that has a material impact

on how the entity would respond to an emergency. The entity must file the updated EOP with the commission no later than 30 days after the change takes effect.

(D) An entity with operations within the ERCOT power region must submit its updated EOP under paragraphs (c)(4)(A), (c)(4)(B), and (c)(4)(C) to ERCOT within 30 days of filing the updated EOP with the commission.

(5) Notwithstanding the other requirements of this subsection, ERCOT must maintain a current EOP in its entirety, consistent with the requirements of this section and available for review by the commission or the commission's designee.

(d) **Information to be included in the emergency operations plan.** An entity's EOP must address both common operational functions that can be used for every type of emergency and annexes that outline the entity's response to the types of emergencies specified in subsection (e). Each entity's EOP must include the following information; if applicable. If a provision in this section does not apply to an entity, the entity must include in its EOP an explanation of why the provision does not apply.

(1) An approval and implementation section that:

(A) introduces the EOP and outlines its applicability;

(B) lists the individuals responsible for maintaining and implementing the EOP, and those who can change the EOP;

(C) provides a revision control summary which outlines and dates each change made to the EOP since the last time the EOP was adopted by the entity;

(D) provides a dated statement that the current EOP supersedes previous EOPs; and

(E) the date the EOP was most recently approved by the entity.

(2) A record of distribution that contains the following information in table format:

(A) titles and names of persons in the entity's organization receiving the EOP; and

- 1 (B) dates of distribution.
- 2 (3) A list of emergency contacts for the entity, including identification of single points of
3 contact during an emergency.
- 4 (4) An affidavit from the entity's highest-ranking representative, official, or officer with
5 binding authority over the entity affirming the following:
- 6 (A) relevant operating personnel are familiar with and have received training on the
7 contents of the EOP, and such personnel are committed to following the EOP
8 except to the extent deviations are appropriate as a result of specific circumstances
9 during the course of an emergency;
- 10 (B) the EOP has been reviewed and approved by the appropriate executives;
- 11 (C) required drills have been conducted;
- 12 (D) the EOP or an appropriate summary has been distributed to local jurisdictions as
13 needed;
- 14 (E) the entity maintains a business continuity plan that addresses returning to normal
15 operations after disruptions caused by an incident; and
- 16 (F) the entity's emergency management personnel who are designated to interact with
17 local, state, and federal emergency management officials during emergency events
18 have received National Incident Management System training, specifically IS-
19 700.a, IS-800.b, IS-100.b, and IS-200.b.
- 20 (5) A communication plan.
- 21 (A) An entity with transmission or distribution service operations must describe the
22 procedures for handling complaints and for communicating with the public; the
23 media; customers; the commission; local and state governmental entities, officials,
24 and emergency operations centers; the applicable Reliability Coordinator; and
25 critical load customers directly served during an emergency.

(B) An entity with generation operations must describe the procedures for communicating with the public; the media; the commission; fuel suppliers; local and state governmental entities, officials, and emergency operations centers; and the applicable reliability coordinator.

(C) A REP must describe the procedures for communicating with the public, media, customers, and the commission and the procedures for handling complaints during an emergency.

(D) ERCOT must describe the procedures for communicating, in advance of and during an emergency, with the public, the media, the commission, governmental entities and officials, the state emergency operations center, and market participants.

(6) A plan to maintain pre-identified supplies for emergency response.

(7) A plan that addresses staffing during emergency response.

(8) A plan that addresses how an entity identifies weather-related hazards, including tornadoes, hurricanes, extreme cold weather, extreme hot weather, drought, and flooding, and the process the entity follows to activate the EOP.

(9) Each relevant annex as detailed in subsection (e) and other annexes applicable to an entity.

(e) Annexes to be included in the emergency operations plan.

(1) An electric cooperative, an electric utility, a municipally owned utility, or a transmission and distribution utility must include in its EOP for its transmission and distribution facilities the following annexes:

(A) A cold weather emergency annex that includes:

- (i) operational plans intended to mitigate the hazards of a cold weather emergency, separate and distinct from the weather preparation standards required under §25.55 (relating to Weather Emergency Preparedness);
- (ii) a checklist for transmission facility personnel to use during cold weather emergency response; and
- (iii) a requirement for pre- and post-weather emergency meetings to review lessons learned from past cold weather emergency incidents and to ensure necessary supplies and personnel are available through the weather emergency.

(B) A hot weather emergency annex that includes:

- (i) operational plans intended to mitigate the hazards of a hot weather emergency, separate and distinct from the weather preparation standards required under §25.55;
- (ii) a checklist for transmission facility personnel to use during hot weather emergency response; and
- (iii) a requirement for pre- and post-weather emergency meetings to review lessons learned from past hot weather emergency incidents and to ensure necessary supplies and personnel are available through the weather emergency.

(C) A load shed annex that must include:

- (i) Procedures for controlled shedding of load, whether caused by planned or forced interruption of service;
- (ii) Priorities for restoring shed load to service; and
- (iii) A registry of critical load customers, directly served, if maintained by an electric utility, an electric cooperative, or a municipally owned utility. The

registry must be updated as necessary but, at a minimum, annually. The registry must include the process for maintaining an accurate registry, the process for providing assistance to critical load customers in the event of an unplanned outage, the process for communicating with the critical load customers, and the process for training staff with respect to serving critical load customers.

(D) A pandemic and epidemic annex;

(E) A wildfire annex that addresses both response to a wildfire emergency and plans intended to mitigate the hazards of wildfire to the entity's facilities;

(F) A hurricane annex that includes evacuation and re-entry procedures if facilities are located within a hurricane evacuation zone, as defined by the Texas Division of Emergency Management (TDEM);

(G) A cyber security annex;

(H) A physical security incident annex; and

(I) Any additional annexes as needed or appropriate to the entity's particular circumstances.

(2) An electric cooperative, an electric utility, or a municipally owned utility that operate a generation resource in Texas; and a PGC must include the following annexes for its generation resources:

(A) A cold weather emergency annex that includes:

(i) operational plans intended to mitigate the hazards of a cold weather emergency, separate and distinct from the weather preparations standards under §25.55;

(ii) verification of the adequacy and operability of fuel switching equipment, if installed;

(iii) a checklist for generation resource personnel to use during cold weather emergency response; and

(iv) a requirement for pre- and post-weather emergency meetings to review lessons learned from past cold weather emergency incidents and to ensure necessary supplies and personnel are available through the weather emergency.

(B) A hot weather emergency annex that includes:

(i) operational plans intended to mitigate the hazards of a hot weather emergency, separate and distinct from the weather preparation standards under §25.55;

(ii) a checklist for generation resource personnel to use during hot weather emergency response; and

(iii) a requirement for pre- and post-weather emergency meetings to review lessons learned from past hot weather emergency incidents and to ensure necessary supplies and personnel are available through the weather emergency.

(C) A water shortage annex that addresses supply shortages of water used in the generation of electricity;

(D) A restoration of service annex that identifies plans intended to restore to service a generation resource that failed to start or that tripped offline due to a hazard or threat;

(E) A pandemic and epidemic annex;

(F) A hurricane annex that includes evacuation and re-entry procedures if facilities are located within a hurricane evacuation zone, as defined by TDEM;

(G) A cyber security annex;

- 1 (H) A physical security incident annex; and
- 2 (I) Any additional annexes as needed or appropriate to the entity's particular
- 3 circumstances.
- 4 (3) A REP must include in its EOP the following annexes:
- 5 (A) A pandemic and epidemic annex;
- 6 (B) A hurricane annex that includes evacuation and re-entry procedures if facilities are
- 7 located within a hurricane evacuation zone, as defined by TDEM;
- 8 (C) A cyber security annex;
- 9 (D) A physical security incident annex; and
- 10 (E) Any additional annexes as needed or appropriate to the entity's particular
- 11 circumstances.
- 12 (4) ERCOT must include the following annexes:
- 13 (A) A pandemic and epidemic annex;
- 14 (B) A weather emergency annex that addresses ERCOT's plans to ensure continuous
- 15 market and grid management operations during weather emergencies, such as
- 16 hurricanes, tornadoes, extreme cold weather, extreme hot weather, and flooding;
- 17 (C) A hurricane annex that includes evacuation and re-entry procedures if facilities are
- 18 located within a hurricane evacuation zone, as defined by TDEM;
- 19 (D) A cyber security annex;
- 20 (E) A physical security incident annex; and
- 21 (F) Any additional annexes as needed or appropriate to ERCOT's particular
- 22 circumstances.
- 23
- 24 (f) **Drills.** An entity must conduct or participate in one or more drills annually to test its EOP if its
- 25 EOP has not been implemented in response to an incident within the last 12 months. If the entity

operates in a hurricane evacuation zone as defined by TDEM, at least one of the annual drills must include a test of its hurricane annex. Following the annual drills, the entity must assess the effectiveness of the drills and change its EOP as needed. An entity must notify commission staff, using the method and form prescribed by commission staff, as described on the commission's website, and the appropriate TDEM District Coordinators, by email or other written form, of the date, time, and location at least 30 days prior to the date of at least one drill each year.

(g) **Reporting requirements.** Upon request by commission staff during an activation of the State Operations Center by TDEM, an entity must provide updates on the status of operations, outages, and restoration efforts. Updates must continue until all incident-related outages are restored or unless otherwise notified by commission staff. After an emergency, commission staff may require an affected entity to provide an after action or lessons learned report and file it with the commission by a date specified by commission staff.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

ISSUED IN AUSTIN, TEXAS ON THE ____ DAY OF _____ 2021 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ANDREA GONZALEZ